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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

ACT NOW TO STOP WAR AND END RACISM COALITION - SAN FRANCISCO, Plaintiff and Appellant, v. CITY AND COUNTY OF SAN FRANCISCO, Defendant and Respondent.	A118134 (San Francisco City and County Super. Ct. No. 506438)

Appellant Act Now to Stop War and End Racism Coalition – San Francisco, known as the A.N.S.W.E.R. Coalition-San Francisco, appeals from the superior court's denial of its verified petition for writ of mandate, writ of prohibition, and declaratory and injunctive relief against City and County of San Francisco, respondent. We reverse the superior court's judgment based solely on our determination that respondent's Department of Public Works (DPW) issued the citations at issue to appellant based upon San Francisco Public Works Code section 184.65 (section 184.65), which does not provide the DPW with authority to issue administrative citations, or for application of the "rebuttable presumption" stated in section 184.65 in the course of the administrative review of those citations. We remand this matter to the superior court with instructions to determine relief that is consistent with this opinion.

BACKGROUND

Appellant is a nonprofit coalition that holds periodic political rallies in San Francisco. It contends that, because it cannot afford more expensive means, it relies on the distribution of political flyers and signs in public places, and on its website, to communicate its message.

Respondent's DPW issued various administrative citations to appellant, each citation contending that appellant had posted a sign on public property, apparently certain lamp posts and utility poles addressed in article 5.6 of the San Francisco Public Works Code (Public Works Code), in a manner that violated certain provisions of respondent's Public Works Code. Appellant does not dispute that its name and contact information were on these postings.

In 2006, appellant filed its verified petition in superior court. Appellant alleged that DPW, relying on section 184.65, had issued 29 administrative citations to it citing Public Works Code violations regarding the manner in which certain signs were affixed to public property, the size of certain signs, and the absence of posting dates and registration numbers, and fined appellant a total of $6,000.[1] Section 184.65 states:

"In any civil action seeking recovery of a civil penalty and/or costs of removal of a Sign for violation of any of the provisions of this Article proof that the Sign posted contains the name of or in any other manner identifies a Person shall give rise to a rebuttable presumption that the Person caused such Signs to be posted or to remain posted."[2]

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[1] Appellant also incorporated into its petition future citations that might be issued during the pendency of the petition proceeding, and subsequently contended below that, as of the date of the petition hearing, it had received additional citations seeking $8,250 in fines. It also contended at that time that an additional $22,000 in fines for citations issued in April 2004 were subject to certain negotiations then ongoing between the parties.

[2] Appellant asserts, and respondent does not contest, that although section 184.65 was revised shortly before the hearing on appellant's action in the superior court, these revisions did not alter the "rebuttable presumption" appellant has challenged.

Appellant's principal argument in its petition, and virtually its entire focus on appeal, is that the citations were issued by DPW pursuant to the "rebuttable presumption" provided for in section 184.65, which on its face violates appellant's rights pursuant to article I, sections 1 and 2, and article 7 of the California Constitution, as well as the First and Fourteenth Amendments of the United States Constitution. Appellant alleged that "[t]he City Attorney has agreed that it will not oppose this facial challenge to the rebuttable presumption by arguing that it is premature because the hearing on the merits is still pending." Appellant also submitted a declaration by its counsel, Ben Rosenfeld, in which Rosenfeld declared that he had received an email from Deputy City Attorney Wayne Snodgrass, in which Snodgrass wrote that " 'if DPW has issued citations to [appellant] pursuant to the rebuttable presumption provision in the Public Works Code, then DPW will not assert that a pure facial challenge to that provision by ANSWER, such as in the form of a CCP 1085 writ petition, is premature.' "

Appellant's only evidence that DPW applied this "rebuttable presumption" was also provided by Rosenfeld in his declaration. He stated that he has represented five different groups "who have been impacted by DPW's application of the rebuttable presumption of guilt in the sign-posting ordinance . . . and sometimes in more than one proceeding. It is my studied opinion that DPW enforces this presumption rigidly and arbitrarily, and that the rebuttable presumption is, in practice, an ironclad presumption. It is apparent to me, from first hand and anecdotal experience, that no quantum of proof is sufficient, in DPW's estimation, to overcome the presumption, and that it's application of the rebuttable presumption is totally standardless." He then recounted his observations regarding DPW citations issued to certain of his clients, but not appellant. Rosenfeld did not provide evidence indicating that DPW relied on section 184.65 in issuing its citations to appellant.

Respondent answered denying most of the allegations, including the allegation that DPW "relied" on section 184.65, which respondent simply argued spoke for itself. However, as a part of its opposition to the petition, respondent also submitted the declaration of DPW Street Inspector Mari Anderson, whose name and apparent signature

is on the declaration of service for each of the 29 citations issued to appellant. Anderson stated that her duties "include the enforcement of the City's sign laws, which are found at article 5.6 (sections 184.56 to 184.68 inclusive) of the City's Public Works Code[,]" and that she is "responsible for investigating complaints arising under those laws, and issuing administrative citations for violations of those laws." She suggested that administrative law judges considered the application of section 184.65 in the course of these proceedings, in that she stated that she had witnessed the dismissal of administrative citations issued by DPW, "including citations issued on the basis of Public Works Code section 184.65." She further indicated that "[i]f the court were to enjoin DPW from issuing administrative citations for illegal signposting except to persons or entities that a DPW employee had personally witnessed in the act of illegally posting a sign, it would be very difficult for DPW to cite anyone responsible for illegal signposting." Anderson also stated regarding DPW's interpretation of section 184.65:

"DPW does not interpret Public Works Code section 184.65 as a basis to infer liability on the part of every single person or entity who is named or identified in an illegally posted sign. Rather than relying only on the fact that the cited person is named or identified in an illegally posted sign, DPW, before it issues an administrative citation, will attempt to investigate whether there appears to be a plausible connection between the person named in the sign and the act of posting that sign. If a person or entity is named or identified in an illegally posted sign, DPW will not issue an administrative citation to that person or entity unless the information available to DPW—including the contents and context of the sign itself, as well as any underlying information that DPW is able to gather (including by telephone inquiries and internet searches)—suggests that the person identified in the sign would appear to benefit from the sign's posting, and do not suggest any other person or entity more likely to be responsible for its posting."

Anderson stated regarding DPW's administrative citations to appellant: "With respect to the administrative citations that gave rise to this lawsuit, DPW issued those citations to [appellant] only after determining (a) that [appellant] benefits from the posting of those signs (which advertise events to which [appellant] seeks to attract the

public), and (b) that [appellant] deliberately makes those signs available to the public by allowing them to be downloaded from its website, without informing the downloading member of the public that San Francisco restricts where and how the sign may be posted."

Respondent, in its opposition brief, stated that "[s]ince at least 1999 . . . the City's laws have recognized that where a sign specifically identifies a person or entity, the sign itself may, in some cases, provide some evidence of who is responsible for posting it," and cited section 184.65. Relying on Anderson's statement of DPW's practices, respondent stated that "DPW views section 184.65 as a law that 'allows, but does not require' the conclusion that a person identified in an illegally posted sign is responsible for its posting." Respondent asserted that "[s]ection 184.65 is very important to the City's enforcement of its signposting laws. Effectively enforcing those laws solely by catching people in the act of unlawfully posting signs would, in many neighborhoods, require almost one citing employee per block, around the clock—resources that DPW does not have." It argued that on its face, section 184.65 meets all constitutional mandates, including because DPW interprets its rebuttable presumption as creating a mere permissive presumption, or inference, which does not shift the burden of proof.

Appellant, in its reply brief below, asserted several grounds for the relief it sought, most of them based on constitutional analyses. However, appellant first argued that as a matter of statutory law, section 184.65 did not apply at all to administrative citations. It stated:

"As a threshold matter, no provision of the Municipal Code even gives DPW the authority to make use of the rebuttable presumption in administrative enforcement actions. Rather, [Public Works Code section] 184.65 applies, but its express language, to a 'civil action,' and nowhere confers the same authority in administrative actions. Since the Public Works Code clearly delineates three separate types of enforcement actions, criminal, civil, and administrative [citations], and, moreover, expressly describes the administrative mechanism as an 'alternative' to a civil action, it is clear from the plain text of the statute that the City's Board of Supervisors [Board] did not intend for the

rebuttable presumption to apply to administrative enforcement actions. Likewise, [San Francisco Police Code section] 39-1, which sets out the process in administrative enforcement actions (such as it does), makes no mention of any rebuttable presumption."

Appellant also advanced various arguments regarding section 184.65's unconstitutionality pursuant to the First and Fourteenth Amendments. It argued that the rebuttable presumption in section 184.65, rather than establish a permissive presumption, was a mandatory rebuttable presumption that DPW enforced as if it were irrefutable. Appellant also argued that the presumption, even if "permissive," was nonetheless unconstitutional, although it did not explain its reasoning beyond stating generalities. Appellant argued that respondent's "permissive presumption" interpretation should be ignored because respondent "has never formally adopted an interpretation of the rebuttable presumption, nor promulgated any standard or guideline."

After hearing argument, the superior court denied the petition in its entirety and entered judgment in respondent's favor. It rejected appellant's facial challenge to section 184.65's constitutionality because it found section 184.65 created a permissive presumption only, and did not violate the law regarding reasonable restrictions on free speech.

The court explained its reasoning further in its statement of decision, but it did not make any factual findings that DPW relied upon section 184.65 in citing appellant, or that section 184.65 would be applied in the administrative hearing regarding those citations. Indeed, the court rejected appellant's "as applied" challenges because it found that "[u]ntil that administrative hearing is held and a final administrative decision is issued, the facts relevant to whether and how section 184.65 may be applied to [appellant], and what fines may be imposed are not yet known."

In its statement of decision, the court also found that appellant's argument that section 184.65 did not apply to administrative citations lacked merit. The court stated:

"[Appellant] also argues that when DPW enforces its signposting laws through the administrative process, it may not rely on section 184.65. This claim provides no basis for relief. It is not a ground to facially invalidate section 184.65. As an applied claim, it

is premature because until the administrative hearing concerning [appellant's] citations has occurred, claims about the evidence surrounding the alleged signposting violation are speculative. Additionally, the fact that section 184.65 does not mention administrative actions is not dispositive. The Board adopted section 184.65 in 1999, four years before it authorized administrative enforcement of local signposting laws and other nuisance laws by adopting [San Francisco] Police Code section 39-1. [Citation.] This court sees little to suggest that the City's Board of Supervisors would have intended section 184.65's presumption to be available in civil lawsuits, but not in administrative actions that were themselves subject to civil judicial review."

Appellant subsequently filed a timely notice of appeal. After the parties filed their initial briefing, we sought supplemental briefing regarding the application, as a matter of law, of section 184.65 in the issuance or administrative review of administrative citations for signposting violations; and whether there was a sufficient basis in the record to conclude that the administrative citations at issue were issued by DPW based upon section 184.65. We also asked the parties whether our addressing the constitutional issues raised by appellant would amount to an advisory opinion if we were to conclude that section 184.65 has no application in the issuance or administrative review of administrative citations, and, if we were to so conclude, what should be the resolution of this appeal.

Both parties submitted supplemental briefing on these issues. Among other things, respondent states in its supplemental briefing that "the City has acknowledged that it issued the citations in question on the basis of section 184.65." Respondent further states that "[i]f the court were to conclude that section 184.65 is categorically inapplicable to the issuance and review of administrative citations, [and] that there is a sufficient basis in the record to conclude that the disputed citations were issued by DPW on the basis of, or will be administratively reviewed under, section 184.65, the appropriate result would be to reverse the trial court and direct the issuance of appropriate relief to [appellant] on purely statutory grounds."

DISCUSSION

Appellant's appeal almost entirely challenges the facial constitutionality of section 184.65. We do not address these issues other than to hold that we cannot rule upon them because they seek an advisory opinion, and to disapprove of the superior court's rulings on the subject for the same reason.

Nonetheless, we reverse the superior court's judgment because respondent acknowledges that DPW issued the citations at issue to appellant based upon section 184.65. Section 184.65 is expressly limited in its application to civil actions. Therefore, it does not provide DPW with the authority to issue administrative citations, or for application of the "rebuttable presumption" stated in section 184.65 in the course of the administrative review of those citations. We disapprove of that portion of the superior court's judgment which found otherwise. Accordingly, we reverse the judgment and remand this matter to the superior court with instructions to determine relief that is consistent with this opinion.

I. *Standard of Review*

This is an appeal from the court's denial of a petition for a writ of mandate or prohibition, and for declaratory and injunctive relief, and involves questions of law regarding section 184.65. We conduct a de novo review of these legal issues. (See *Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1104.)

II. *Section 184.65 Does Not Govern Administrative Citations*

Respondent's regulation of signposting on city-owned lamp posts and utility poles is outlined in article 5.6 of the Public Works Code section 184.56 et seq. (the PWC article), and San Francisco Police Code (Police Code) section 39-1. Public Works Code sections 184.57 to 184.60 describe the various permitted and prohibited practices regarding the posting of signs. Public Works Code section 184.61 states that any sign affixed to any property in violation of the provisions of the PWC article are declared to be a public nuisance.

The PWC article authorizes action against persons who commit violations of the article in three different ways. First, violators are subject to criminal penalties, which

may be a fine or a community service requirement. (S.F. Pub. Works Code, § 184.62.) Second, persons who violate the article and fail to pay the amount billed to them for their violation are liable for payment of a civil penalty obtained through litigation. (S.F. Pub. Works Code, § 184.63, subd. (a).) Third, "[a]s an alternative, the civil penalty . . . may be assessed by an administrative citation issued by [DPW] officials designated by Section 38 of the Police Code." (S.F. Pub. Works Code, § 184.63, subd. (a).) Furthermore, "[s]uch administrative penalties shall be assessed, enforced and collected in accordance with Section 39-1 of the Police Code[.]" (*Ibid*.) Accordingly, subdivision (a) of respondent's Police Code section 39-1 states that it governs "the imposition, assessment and collection of administrative penalties imposed pursuant to . . . Section[] . . . 184.63 of the Public Works Code." (S.F. Police Code, § 39-1, subd. (a).)

Police Code section 39-1 provides an extensive outline of the administrative procedures that must be followed. Its administrative penalty scheme "is not intended to be punitive in nature, but is instead intended to compensate the public for the injury and damage caused by the prohibited conduct." (S.F. Police Code, § 39-1, subd. (b)(2).) Accordingly, where a designated officer or employee "determines that there has been a violation of a local . . . nuisance law that authorizes imposition of an administrative penalty, the officer or employee may issue an administrative citation to the person and/or entity responsible for the violation." (S.F. Police Code, § 39-1, subd. (c).) "A person or entity that has been issued an administrative citation may request administrative review in order to contest the citation issued in accordance with this section." (S.F. Police Code, § 39-1, subd. (d)(1).) "The administrative review hearing shall be conducted by a neutral hearing officer from outside the [DPW] and the department whose employee issued the citation, assigned by the Director of Administrative Services. . . . The parties may present evidence and testimony to the hearing officer. All testimony shall be under oath. The hearing officer shall ensure that a record of the proceedings is maintained." (S.F. Police Code, § 39-1, subd. (d)(3).) Section 39-1 also states that in these hearings, "[t]he burden of proof to uphold the violation shall be on the City, but the administrative

citation shall be prima facie evidence of the violation." (S.F. Police Code, § 39-1, subd. (d)(3).)

The record shows that appellant received administrative citations subject to Police Code section 39-1's procedures. Appellant submitted copies of the front pages of the citations it received with its petition below. Each is denominated an "Administrative Citation," states that appellant is in violation of either Public Works Code section 184.57, subdivision (b) (in 20 cases) or Public Works Code section 184.58, subdivision (b) (in nine cases), assesses appellant an "administrative penalty," and states that it "must be paid or a hearing scheduled." None of the citations refer to section 184.65, the "rebuttable presumption" provision.

Nonetheless, as we have already discussed, respondent indicates in its supplemental briefing that DPW issued the administrative citations to appellant on the basis of section 184.65. Therefore, appellant does not challenge the legality of section 39-1's procedures, or the evidentiary standard for administrative proceedings stated therein. Instead, appellant filed its petition prior to the commencement of such administrative review hearings in order to make a facial challenge to section 184.65. However, section 184.65 by its own terms only is applicable to "civil actions," as it begins, "*In any civil action* seeking recovery of a civil penalty and/or costs of removal of a Sign for violation of any of the provisions of this Article . . . ." (Italics added.)

As we have discussed, appellant briefly argued below that section 184.65 does not apply to the administrative enforcement actions that are the subject of this dispute. The superior court rejected this argument. In its statement of decision, the court stated that it saw "little to suggest that the City's Board of Supervisors would have intended section 184.65's presumption to be available in civil lawsuits, but not in administrative actions that were themselves subject to civil judicial review."

The court's statement ignores that, as a basic rule of statutory interpretation, we construe a law " ' "to promote its purpose, render it reasonable, and avoid absurd consequences." ' " (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1055.) In doing so, " 'we first look to the plain meaning of the statutory language, then to its

legislative history and finally to the reasonableness of a proposed construction.' " (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082.) "If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs." (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 (*Day*); accord, *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1146 [stating, based on *Day*, that "[i]f the language of the statute is unambiguous, the plain meaning governs"].)

It is black letter law that administrative review hearings, including those in dispute in the present case, are not civil actions. "An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense." (Code Civ. Proc., § 22.) " ' "An administrative proceeding is neither a 'civil action' . . . nor a 'special proceeding of a civil nature'. . . ." ' " (*Niles Freeman Equipment v. Joseph* (2008) 161 Cal.App.4th 765, 779.) "Thus, the Legislature has defined an 'action' to refer to a *court* proceeding [and] the courts of this state have long interpreted that term to *exclude* administrative hearings[.]" (*Ibid.*; see also *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 48 [administrative proceeding is neither a "civil action" nor "special proceeding of a civil nature" for statute of limitations purposes], cited approvingly in *People v. Yartz* (2005) 37 Cal.4th 529, 541; *Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal.4th 857, 887 [distinguishing between administrative proceedings and civil actions in determining that a "suit" was a court proceeding started by the filing of a complaint].) Therefore, as a result of the plain meaning of section 184.65's opening phrase, "in any civil action seeking recovery . . . " its rebuttable presumption cannot be applied in the subject administrative citation process.

Police Code section 39-1 further establishes that the rebuttable presumption does not apply to the subject administrative citation process. Section 39-1, which clearly governs here, not only makes no reference to this rebuttable presumption, but plainly states that "[t]he burden of proof to uphold the violation shall be on the City, but the

administrative citation shall be prima facie evidence of the violation." (S.F. Police Code, § 39-1, subd. (d)(3).)[3] This is the evidentiary standard that applies to the administrative citation process. Moreover, a reviewing court would evaluate rulings made in such administrative proceedings with this standard in mind, as such a civil action would be a review of those proceedings pursuant to Police Code section 39-1, subdivision (d)(4),[4] and not a "civil proceeding for the recovery . . ." of a civil penalty referred to in section 184.65. Thus, the parties to this appeal are debating an ordinance which simply has no bearing on their administrative dispute.

Respondent argues that whether or not section 184.65 applies to the issuance of administrative review of administrative citations turns on the intent of the Board. While respondent acknowledges that our inquiry begins with the text of the provision, it argues that any "literal construction should not prevail if it is contrary to the legislative intent." Respondent quotes our Supreme Court's instruction in *Van Horn v. Watson* (2008) 45 Cal.4th 322 (*Van Horn*) that in interpreting a statute, " '[t]he intent prevails over the letter, and the letter will, if possible be so read as to conform to the spirit of the act.' " (*Id.* at p. 327.) Respondent also urges us to consider what it views to be the policies and purposes of section 184.65 (citing *Rudd v. California Casualty Gen. Ins. Co.* (1990) 219 Cal.App.3d 948, 951-952), the wider historical circumstances of its enactment (citing *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 659), and to " 'apply common sense' " to the language at hand and " 'interpret [section 184.65] to make it workable

[3] We need not determine whether the standard contained in Police Code section 39-1, subdivision (d)(3) has or has not a similar effect to section 184.65's rebuttable presumption, as respondent argues is the case, because Police Code section 39-1, subdivision (d)(3) is not challenged in this appeal.

[4] Police Code section 39-1, subdivision (d)(4), states in relevant part that "[t]he decision shall be a final administrative determination. An aggrieved party may seek judicial review of the decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6."

and reasonable' " (citing *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 567).

Respondent does not argue, however, that the circumstances involved in the case law it cites are on point here. We find no reason to conclude that they are. For example, in *Van Horn, supra*, 45 Cal.4th 322, the Supreme Court considered whether or not a particular Health and Safety Code provision regarding liability for "emergency care" provided at the scene of an emergency should be read expansively so as to include emergency *nonmedical* care provided at the scene of a *nonmedical* emergency. (*Van Horn*, at pp. 327-331.) Thus, the court was considering how broadly to interpret a generally stated phrase. This is quite different than the issue presented to us, which is whether or not to ignore express, plain language in section 184.65 and Police Code section 39-1.

Respondent gives little weight to our Supreme Court's instruction that generally, it is only "[i]f . . . the statutory terms are ambiguous, then we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history." (*Day, supra*, 25 Cal.4th at p. 272; accord *Gattuso v. Harte-Hanks Shoppers, Inc., supra*, 42 Cal.4th at p. 567.) Certainly, " '[t]he words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.' " (*Quintano v. Mercury Casualty Co., supra*, 11 Cal.4th at p. 1055.) Also, we must " ' "construe a statute to promote its purpose, render it reasonable, and avoid absurd consequences." ' " (*Ibid*.) As this court has previously stated, "we do not view the language of the statute in isolation. [Citation.] Rather, we construe the words of the statute in context, keeping in mind the statutory purpose." (*MacIsaac v. Waste Management Collection & Recycling, Inc., supra*, 134 Cal.App.4th at p. 1083.)

Nonetheless, as this court has also stated, we must give the words of a statute " 'plain and commonsense meaning' " unless the statute specifically defines the words to

give them a special meaning. (*MacIsaac v. Waste Management Collection & Recycling, Inc.*, *supra*, 134 Cal.App.4th at p. 1082.) In other words, we cannot ignore the plain language in section 184.65 limiting its application to a "civil action," nor the burden of proof standard expressly provided in Police Code section 39-1, subdivision (d)(3), for administrative proceedings. To do otherwise would be to inappropriately disregard our Supreme Court's cautionary instruction that the "[i]dentification of the laudable purpose of a statute alone is insufficient to construe the language of the statute. 'To reason from the evils against which the statute is aimed in order to determine the scope of the statute while ignoring the language itself of the statute is to elevate substance over necessary form. The language in which the statute is cast confines and channels its purpose.' " (*Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 176, fn. 9.)

In any event, respondent does not provide us with a good reason to do so. It contends that "the chronology of the local legislation shows the Board's intention that section 184.65 apply when DPW enforces signposting laws through the administrative process, subject to judicial review, as well as when DPW enforces those laws by filing civil lawsuits." According to respondent, the Board enacted an enforcement procedure that allowed the City to pursue criminal and civil penalties for certain prohibited signposting in 1999, and included section 184.65 in that legislation. In 2003, the Board added Police Code section 39-1 to create an administrative penalties process. Respondent argues:

"The effect of this 2003 change was to broaden the already-existing laws that governed signposting enforcement. . . . Thus, while [the 2003 ordinance] did not expressly amend section 184.65, its effect was to make section 184.65's presumption . . . also available in the administrative process. [¶] This conclusion follows as a logical matter. If the contents of a sign could provide a sufficient basis for liability and the imposition of a civil penalty, and that penalty could also be pursued through the administrative process, then section 184.65 must be relevant to the administrative

process as well as to civil suits filed by the City. [¶] This is also the interpretation that best comports with common sense. . . . To [deprive DPW of that enforcement tool] would undermine and frustrate the legislative body's evident goal of broadening enforcement options and facilitating better nuisance law enforcement."

Respondent's argument is wholly unpersuasive. It boils down to the presumption that the Board's sole intention in adopting the 2003 administrative citation procedures was to broaden DPW's enforcement powers and, therefore, it must have intended section 184.65 to apply in those circumstances, regardless of plain language to the contrary and the inclusion of a separately stated burden of proof standard in the governing Police Code section 39-1. We reject this argument.

Respondent further argues that we should "treat section 184.65 as applying in administrative enforcement on the basis of deference to [DPW's] interpretation of that law. While the final word on the meaning of a statute is for the judiciary, courts must 'accord[] great weight and respect to the administrative construction' of a statute by the administrative agency charged with responsibility for administering it. (*Yamaha Corp.[of America] v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 12.)" Respondent contends that since it is responsible for administering the procedures outlined in Police Code section 39-1, and for implementing the City's signposting laws, including section 184.65, DPW's "understanding of the legislative body's intent is reasonable, and worthy of respect."

Respondent's "deference" argument, however, relies on a case in which our Supreme Court also made clear that, when considering an agency's legal interpretation of a statute, "[a] court does not . . . defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature." (*Yamaha Corp. of America v. State Bd. of Equalization, supra,* 19 Cal.4th at p. 11, fn. 4.) Furthermore, "[w]hether judicial deference to an agency's interpretation is appropriate and, if so, its extent—the 'weight' it should be given—is . . . fundamentally *situational*. A court assessing the value of an interpretation must consider a complex of factors

material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command." (*Id.* at p. 12.) We see no reason to defer to DPW's interpretation of section 184.65, which text is not " 'technical, obscure, complex, open-ended, or entwined with issues of fact, policy, [or] discretion, ' " or require the application of any particular agency expertise (*Yamaha*, at p. 12), and when DPW's interpretation is not "likely to be correct." (*Ibid.*) The meaning of the provisions involved is plain. Moreover, the courts, not respondent, are responsible for interpreting and enforcing section 184.65, since it is an evidentiary standard to be applied in civil actions, and not in any DPW proceeding. Accordingly, respondent's deference argument fails.

In short, we hold that section 184.65 does not apply in the issuance or review of administrative citations pursuant to article 5.6 of respondent's Public Works Code and Police Code section 39-1, in light of section 184.65's limited application to "any civil action," and the directive contained in Police Code section 39-1, subdivision (d)(3) that "[t]he burden of proof to uphold the violation shall be on the City, but the administrative citation shall be prima facie evidence of the violation." The DPW relied upon improper authority in issuing the citations at issue. Therefore, the superior court improperly denied the relief sought by appellant below.

III. *Appellant's Challenge to Section 184.65's Constitutionality*

Appellant's appeal presents several arguments regarding the facial constitutionality of section 184.65. It contends that section 184.65 violates its First Amendment rights, constitutes an "arbitrary action by government officials enforcing laws impacting core First Amendment rights,"[5] that its " 'rebuttable presumption' of guilt

[5] Appellant argues, among other things, that respondent has not met its statutory duty pursuant to Government Code section 53069.4, subdivision (a)(1), by its failure "to promulgate any procedures for the enforcement of this provision and has imposed fines and penalties in excess of statutorily permissible fines." To the extent that appellant might intend this "arbitrariness" argument to be independent of its challenge to section 184.65, it is not sustainable in light of Police Code section 39-1, which outlines

imposes strict liability for speech," which "contravenes the constitutionally based presumption of innocence that attaches to any law imposing a penalty on speech," and that it is not required to exhaust its administrative remedies before making these facial challenges.

We conclude that it would be inappropriate to rule on appellant's appellate arguments regarding the constitutionality of section 184.65 under the circumstances, and that the superior court did not have the jurisdiction to rule on these issues either.

As our Supreme Court has stated, " 'The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court.' " (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 860.) As more fully explained in *City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43 (*City of Santa Monica*):

"A controversy 'ripens' once it has reached, 'but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.' [Citation.] Ripeness is aimed at 'prevent[ing] courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of . . . opinion. It is in part designed to regulate the workload of courts by preventing judicial consideration of lawsuits that seek only to obtain general guidance, rather than to resolve specific legal disputes. However, the ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy.' [Citation.]

"A two-pronged test is used to determine the ripeness of a controversy: (1) whether the dispute is sufficiently concrete so that declaratory relief is appropriate; and (2) whether the parties will suffer hardship if judicial consideration is withheld. [Citation.] 'Under the first prong, the courts will decline to adjudicate a dispute if "the

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procedures consistent with the directive contained in Government Code section 53069.4, subdivision (a)(1). Appellant fails to establish that these procedures are inadequate.

abstract posture of [the] proceeding makes it difficult to evaluate . . . the issues [citation], if the court is asked to speculate on the resolution of hypothetical situations [citation], or if the case presents a "contrived inquiry [citation]." Under the second prong, the courts will not intervene merely to settle a difference of opinion; there must be an imminent and significant hardship inherent in further delay.' " (*City of Santa Monica, supra,* 126 Cal.App.4th at pp. 63-64.)

Thus, " '[i]t is . . . the prevailing doctrine in our judicial system that an action not founded upon an actual controversy between the parties to it, and brought for the purpose of securing a determination of a point of law, is collusive and will not be entertained[.]' " (*City of Santa Monica*, *supra*, 126 Cal.App.4th at p. 66.) "[E]ven in circumstances when an issue involves significant public interest, California courts adhere to the even older, and more important, judicial policy against issuing advisory opinions. '[N]either we nor the trial court can give advisory opinions or resolve disputes over matters which involve parties not before us even if the parties are united in their desire to have the court resolve unripe issues or claims which the parties have no standing to assert.' " (*Id.* at p. 69.)

Here, the parties agreed to the adjudication of their differences of opinion regarding section 184.65, but that was insufficient to create an actual controversy. In light of our conclusion that, as a matter of law, section 184.65 does not apply to the administrative procedures debated between the parties, any ruling by this court, or the lower court, about section 184.65's constitutionality would amount to an advisory opinion.

DISPOSITION

We reverse the trial court's judgment, based solely on our determination that DPW issued the citations at issue to appellant based upon section 184.65, which does not provide the DPW with authority to issue administrative citations, or for application of the "rebuttable presumption" stated in section 184.65 in the course of the administrative review of those citations. Respondent's authority regarding administrative citations is found in Public Works Code section 184.63, subdivision (a), and Police Code section

39-1. Specifically, Public Works Code section 184.63, subdivision (a), states in relevant part that such citations are to be "issued by [DPW] officials designated in Section 38 of the Police Code. *Such administrative penalties shall be assessed, enforced and collected in accordance with Section 39-1 of the Police Code*, and shall include the costs to the City incurred in obtaining the imposition of the penalty, including the cost of paying City employees to engage in the administrative process. " (S.F. Pub. Works Code, § 184.63, subd. (a), italics added.)

We deny appellant's appeal regarding the constitutionality of section 184.65 because it in effect asks for an advisory opinion, and is neither within our or the superior court's jurisdiction to consider.

To the extent portions of the superior court's judgment and statement of decision are inconsistent with our opinion, those portions are hereby disapproved, including the entirety of the lower court's discussion and rulings regarding the constitutionality of section 184.65.

We remand this matter to the superior court with instructions to determine relief that is consistent with this opinion.

Appellant is awarded its costs of appeal.

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Lambden, J.

We concur:

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Haerle, Acting P.J.

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Richman, J.